Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Provision of Directory Listing Information	)	CC Docket No. 99-273
Under the Telecommunications Act of 1934	)	
As Amended	)	
	)	

To: The Commission

INFONXX, INC. OPPOSITION TO PETITIONS FOR RECONSIDERATION

The Commission's recent decision in this proceeding, the *Directory Listings Order*,[1] which was reached after more than two years of review and analysis, represents a modest but positive step toward promoting competition in the Directory Assistance (DA) marketplace. The Commission should now reject attempts by Qwest Corporation (Qwest) and SBC Communications Inc./BellSouth Corporation (SBC/BellSouth) in their petitions for reconsideration to cabin the Commission's rules with overly restrictive interpretations that could lead to consumer confusion and frustrate DA competition.[2] Specifically, InfoNXX, Inc.

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[1] Report and Order, *In re Provision of Directory Listing Information under the Telecommunications Act of 1934, as Amended*, CC Docket No. 99-273, FCC 01-27 (rel. Jan. 23, 2001) (*Directory Listings Order*).

[2] Qwest Corporation, Petition Reconsideration, CC Docket 99-273 (filed March 23, 2001) (Qwest Petition); SBC Communications Inc./BellSouth Corporation, Petition for Clarification or, in the Alternative, Reconsideration, CC Docket No. 99-273 (filed March 23, 2001) (SBC/BellSouth Petition).

(InfoNXX), the leading competitive DA provider, opposes any suggestion by Qwest or SBC/BellSouth that competitive DA providers receiving DA information pursuant to Section 251(b)(3) of the Communications Act should not have access to subscriber information for non-listed or non-published numbers when that information would be used to ensure accuracy for consumers seeking DA information. Competitive DA providers, just as incumbent local exchange carrier (LEC) DA providers, need access to a complete DA database to ensure the accuracy of listings, even though the providers do not divulge non-listed and non-published numbers. Denying access to non-listed and non-published numbers would do nothing to advance privacy concerns but could lead to inaccurate DA information being given to consumers. Finally, the Commission should not accede to the unsupportable requests of Qwest and SBC/Bellsouth to have LECs determine the nature of DA use restrictions. We believe that the Commission's *Order* correctly reposed with the states authority for setting limits on use of DA information. If the Commission is concerned about use of subscriber DA information for non-DA purposes (and that concern seems to animate much of the Bells' petitions), then InfoNXX urges that any restrictions on the use of DA information should not be determined by incumbent LECs but should arise with the states.

Accordingly, the Commission should deny the petitions of Qwest and SBC/BellSouth.

I. ALL DA PROVIDERS, INCLUDING COMPETITIVE DA PROVIDERS, HAVE LEGITIMATE NEEDS FOR ACCESS TO NON-PUBLISHED AND NON-LISTED SUBSCRIBER INFORMATION.

All DA providers respect the privacy decisions of subscribers and honor requests for non-listed or non-published treatment, but nonetheless all DA providers need access to subscriber information associated with non-listed or non-published numbers in order to respond

accurately to requests for DA information. Two reasons support this apparent anomaly. First, a complete list of subscribers' names and addresses, including non-listed and non-published, enables a DA provider to recognize that there are two subscribers with nearly identical names in the same town – for example, two James Smiths in Vienna ("Do you want the one on Maple Avenue or on another street?") – and to identify which one the caller is trying to reach. Second, even if James Q. Smith on Oak Avenue in Vienna has requested that his number be non-listed or non-published, the DA operator will be able to assure the caller that the person she seeks exists but that his number is not available. In either case, all DA providers need access to a *complete* list of a LEC's subscribers even though the provider never misuses – in fact, does not even need – the actual non-listed or non-published number.

In this regard, the needs of competitive DA providers are no different than the needs of DA providers affiliated with incumbent LECs. Accordingly, competitive DA providers should have access to the same information in the same DA database as incumbent LEC DA providers enjoy.

II. ANY RESTRICTIONS ON USE OF DA INFORMATION SHOULD COME FROM THE STATES, NOT INCUMBENT LECS.

In the *Directory Listings Order*, the Commission did not impose restrictions on how competitive DA providers use DA information obtained pursuant to Section 251(b)(3), because it found no limitation in the language of that provision, or elsewhere in the Act, or in its rules.[3] The Commission, however, recognized that State-imposed restrictions on use of DA information are permissible as long as a State restriction does not discriminate by imposing

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[3] *See Directory Listings Order*, ¶ 29.

different restrictions on competing providers.[4] In disregard of the Commission's clear decision, however, Qwest and SBC/BellSouth seek not only to have additional use restrictions imposed but also to have LECs determine the extent of those restrictions.[5] The Bells, already exercising bottleneck control over virtually all directly listings, incredibly seek to further entrench their gatekeeper role. The Commission should ignore this attempt by Qwest and SBC/BellSouth to arrogate to themselves further control over directory listings.

The Bells' proposal for LEC-imposed restrictions erroneously begins from the premise that there must be restrictions on *other* companies that use DA information. They simply assume that they should not be subject to any such restrictions, but assert that they must impose restrictions when that information is given to others. Their proposal, however, is inconsistent with the Act. If a LEC were to provide a "degraded" level of access to DA information, as Qwest and SBC/BellSouth suggest, it would not comply with the nondiscrimination requirement of Section 251(b)(3).[6] In its *Order,* the Commission concluded that a State could limit uses of DA information, for example, by prohibiting its sale to telemarketers.[7] That conclusion surely is correct: the Commission simply found that such a limit, if applied equally to LECs and competitors, would not be inconsistent with the statutory nondiscrimination requirement. The Commission clearly did not conclude that DA information *should* be restricted by the States or anyone else, certainly not by the LECs that control the data

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[4] *See id.* (citing discussion of permissible LEC restrictions on use of directory listings in *Local Competition Second Report and Order*, CC Docket No. 96-98, 11 FCC Rcd 19392, 19461-62 (1996)).

[5] *See* Qwest Petition at 2, 5-16; SBC/Bellsouth Petition at 2, 7.

[6] *See Local Competition Second Report and Order*, 11 FCC Rcd at 19460-61.

in the first place. If the Commission had reached such a conclusion, then the Bells' assertion that State regulation is inadequate may have had some relevance, but as it is, the extent of State regulation of DA information is immaterial.

The Commission correctly recognized in the *Directory Listings Order* that there is no basis for the Bells' underlying premise that there must be limits on the use of DA information. Certainly, there is no basis for imposing restrictions on competitive DA providers that simply track representations made by a LEC on its website, as Qwest suggests.[8] That would turn the current system of governmental regulation on its head. The more logical step would be to require the LEC to conform its public representations to the state of existing regulation. Accordingly, if any restrictions on the use of DA information are to be imposed, they must come from the States. In any case, it would be unfair and an opportunity for abuse if an incumbent LEC were able to unilaterally impose restrictions. A general, self-interested desire on the part of LECs to restrict legitimate use of DA information provides no reason whatsoever for allowing them to impose their own restrictions.

CONCLUSION

The Commission's *Directory Listing Order* correctly recognized that competitive DA providers, as do incumbent LEC DA providers, require access to all subscribers' names and addresses in a LEC's database, even if their numbers are non-listed or non-published, in order to avoid confusion and to provide reassurance when answering DA queries. The Commission also correctly determined that LECs should not be able to restrict access to this subscriber

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[7] *See Directory Listings Order*, ¶ 29.

[8] *See* Qwest Petition at 12 and n.25.

information to be used in the provision of DA services and that any restrictions on the use of DA information should be imposed by regulatory bodies – the states or the Commission – not by LECs. Accordingly, the Commission should deny the petitions for reconsideration of Qwest and SBC/BellSouth to the extent that they suggest either improper or LEC-imposed restrictions on the use of directory listings.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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